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SUBJECT: Honduras: Telecom Debates in Final Round

REF: Tegucigalpa 00715

11. (U) This is an action request: Please see para. 11.

12. (U) SUMMARY: The CAFTA-compliant telecommunications sector framework law (Ley Marco), recently revised and shortened, is now set to be introduced to Congress. A competing law by parastatal telecommunications company Hondutel has so far gained little traction in the Congress, but still counts the powerful telecom workers union as a supporter. Meanwhile, Hondutel management has started to cancel contracts with competing operators -- allegedly because the permits are underutilized and to "reduce speculation." Hondutel may also be looking to find a partner to develop its own mobile service. Post requests Washington-based agencies' views on whether the proposed award of a new cell phone concession must be open and competitive under CAFTA rules. END SUMMARY.

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TWO BILLS SET TO COLLIDE  
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13. (U) As reported in reftel, a shortened Ley Marco (telecommunications framework law) has been drafted and submitted to the Honduran Congress for formal introduction. The law was originally 120 articles long but was shortened to 80 articles for quicker comprehension by the largely freshman Congress. At the same time Hondutel, the state telecommunications company, has submitted its own version of the Ley Marco to the Congress, one that seeks to roll back competitive initiatives and reestablish a more "ordered" environment. The Hondutel law is strongly supported by the anti-globalization Bloque Popular, a group that on this issue is making common cause with the Hondutel workers union among others.

14. (SBU) The shortened Ley Marco was submitted quietly to Congress on May 17. On the same day, almost 700 union workers marched from the Presidential house to the Congress to present the Hondutel version. Despite the fanfare, Econ sources confirm that National Party congressman and telecommunications committee head Rodolpho Irias Navas made it clear to union leaders that the shortened Ley Marco would be the only law considered. Irias Navas encouraged the union to present ideas and suggestions, but within the "spirit" of the law that calls for more competition. The Hondutel version, which requests a two-year non-competitive period and would delay key CAFTA-inspired initiatives, would not meet that requirement.

15. (SBU) Hector Nunez, the head of a private industry group (ASETEL) in the sector, is confident that the bill will pass "within the next two weeks." He stated that his strategy is to have the bill backed in Congress by President Jose Manuel "Mel" Zelaya, a move that he believes would help ensure its passage. Nunez and several other private sector representatives will meet with Presidential minister Yani Rosenthal on May 23 to present this proposal, and request that he seek Zelaya's backing. (Comment: On May 19, Zelaya made a speech in which he criticized past privatizations as a mistake -- a stance which may not bode well for courting his support of a bill that opens telecommunications to greater competition and could force Hondutel to privatize or at least take on a strategic partner in order to survive. Ambassador raised the importance of a good "Ley Marco" in a May 22 meeting with President Zelaya, who tasked his Foreign Minister with following up with Minister Rosenthal on the issue. End Comment.)

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HONDUTEL'S MONOPOLY - NOT SO EASY TO BREAK  
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16. (SBU) Meanwhile, Hondutel continues to try various tactics to ward off competition as long as possible. According to Irias, while the company's version of the Ley Marco (a sector-wide framework) will probably not be presented to Congress, the proposed Organic Law (which deals specifically with Hondutel itself in its role as a parastatal -- reftel) has gone nowhere. This law attempted to restructure the former monopoly and allow the company broader discretion in spending, in order, they claim, to allow it to compete in the new environment. (The company would not, for example, have to seek public, competitive bids for its equipment procurements.) The proposed law was termed a "poorly written disaster" by World Bank representatives and former commissioners of CONATEL, the telecommunications oversight agency.

17. (SBU) Meanwhile, Hondutel has also moved to cancel licenses awarded to "sub-operators" that have not sufficiently developed their business. These companies invested in Honduras in 2004 and 2005, offering telephone services under contract to Hondutel while awaiting the December 26, 2005, end of Hondutel's monopoly. At that time, they were to have become fully independent operators, which could directly compete with Hondutel. The regulatory changes that would have made this possible have not been passed, and the sub-operators remain in limbo. Some suspect therefore that Hondutel's moves to cancel current contracts now are an attempt to reduce eventual competition once the market is opened.

18. (SBU) In a meeting May 4 with EconChief and EconOff, Hondutel second-in-command Marcelo Antonio Chimirri admitted that his legal department had been sending out cancellation letters to operators that "were not using their permits." Chimirri claimed this was done to "avoid speculation" in permits by companies seeking to "flip" the permit to another firm for a profit. (Comment: This explanation rings false to Post, since no limit was placed by the GOH on the number of operating permits that could be approved. With an unlimited supply, speculation is not possible, since prices cannot be made to rise. Moreover, early reports suggest that permits for companies that are operating are also being canceled, calling into question Hondutel's alleged legal basis for the cancellation, as well as its rationale that the permits were being canceled because they were not being used. End Comment.) Per Chimirri, explicit in the service contract was a requirement to notify Hondutel, by payment or other means, that a company was using (or intending to use) its operating permit within 30 days of its approval. Chimirri also stated that any company whose permit was being canceled could appeal the cancellation. (EconChief and EconOff will meet next week with one of the first companies to receive this letter to better understand the alleged legal basis behind the decision.)

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FUTURE PLANS INCLUDE PAY-PER-VIEW, DSL, MOBILE  
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¶9. (SBU) Later in the meeting Chimirri, a cable industry veteran, detailed some of Hondutel's business plans. While Hondutel pushes for a two-year non-competitive period and an "ordered" market opening, the parastatal company will embark on a spending spree to take advantage of emerging technologies. He echoed Hondutel President Jacobo Regalado's call to offer pay-per-view services, and confidently called for the roll-out of high speed DSL over Hondutel's aging copper phone lines "within the next four months." Per the World Bank, Hondutel has spent about USD 220 million over the past four years on new projects, many of which remain uncompleted.

¶10. (SBU) When asked about the potential development of Hondutel's mobile capability, Chimirri responded with a more realistic timeframe of nine months before service could be offered. He indicated that Hondutel has the license and equipment available to offer the service but lacks the necessary market acumen and funding to make the service a success. To that end Hondutel has publicly stated that they are seeking a potential partner to outsource or invest in Hondutel to launch a mobile service. By their own admission, the mobile market most probably has room for only one more player, bringing the total to three cell-phone companies serving a market that is currently only 1.3 million users. Post is concerned that the GOH could award such a cell license to Hondutel in a non-competitive or non-transparent manner. Post is also concerned about reports that Hondutel head Regalado has suggested that the two existing cell phone concessions be cancelled. Post understands the Presidency quashed that idea, but such a proposal speaks to Regalado's view of markets.

¶11. (SBU) ACTION REQUEST: FOR USTR: Post requests comment on the Hondutel initiative to partner or attract an investor to help develop its mobile service, specifically if this bid falls under the CAFTA guidelines on government contract bidding and transparency. Confirmation of this could allow the bidding process to be extended to U.S. companies. Options for a potential partner could range from a limited investment or consulting role to a complete outsourcing.  
END ACTION REQUEST.

¶12. (SBU) COMMENT: With the legislative slate relatively clear and momentum apparently on the side of the "shortened" Ley Marco, this could be an opportune moment to get the advances under CAFTA codified into law. ASETEL's initiative to have the GOH executive back the proposal may pave the way for the bill to make the Congressional agenda, and begin discussion before Congress breaks for recess in June. The competing bill from Hondutel remains a threat, however, and how the Bloque Popular and others react to the Congressional debate may still affect the outcome of the new Ley Marco.  
END SUMMARY.